

**Village of Brewster
Planning Board Meeting Minutes
August 18, 2020**

BOARD MEMBERS:

Rick Lowell, Chairman
Janet Ward, Vice Chairperson
David Kulo
Marti Foster
Katy New

PROFESSIONAL ADVISORS:

Greg Folchetti, Attorney - Costello & Folchetti
Todd Atkinson, PE – J.R. Folchetti & Associates

Chairman Lowell led the Board in the Pledge of Allegiance, whereupon the proceedings were called to order at 7:30pm.

REGULAR MEETING:

Chairman Lowell made a motion to open the regular meeting. This was seconded by Boardmember Foster and passed unanimously.

The minutes of the July 21, 2020 meeting were discussed. The motion to approve the June 16, 2020 minutes as amended was introduced by Boardmember Foster, seconded by Chairman Lowell and passed all in favor.

85 MAIN STREET:

Alan Dylan, Esq. of Dylan & Dylan LLC, David Guerrero, and Julio Delgado represented this application before the Board.

Chairman Lowell said the permit terms were exceeded or not but I am unsure to what extent and asked Bill Scorca to provide a summary. Mr. Scorca said initially Mr. Delgado requested a permit to reconfigure the basement and a demo permit. Mr. Scorca said he went beyond the scope of work and the entire building was gutted. He said they worked with Mr. Delgado and the architect and they are trying to do the right thing, but the problem is they exceeded the 50% rule and that's why they are now before the Planning Board. Mr. Hernandez, Village Building Inspector, informed them they had to make the building safe, which they did but then went beyond the scope of work there. Mr. Hernandez had George Gaspar take a look and he said it exceeded the 50% and needed to go in front of Planning. Boardmember Foster asked what is the 50% rule? Mr. Scorca said the 50% rule means you have gone beyond the actual value of the building according to our Municipal Code and that basically means that because of that they have to go in front of you as if it was basically a new building for Planning, but it isn't really because they haven't gone beyond the footprint of the building. In all fairness to the builder, Mr. Scorca said, they went beyond the 50% to ensure the building was safe. Chairman Lowell said this is something they discovered after they began demolition. Mr. Scorca said Mr. Delgado has put a lot of money into the building and we're trying to help him, but it has to be done properly. He said there is also a

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retaining wall that has to be addressed because there is a topographical difference in height next to the Verizon building. Boardmember Foster said is the building safe right now? Mr. Scorca said I haven't been inside and I wouldn't feel comfortable saying it unless Todd and I took a walk through. Boardmember Foster said I think that is something that has to be addressed very soon if not immediately.

Chairman Lowell said when did work cease on the building? Mr. Scorca said at least two months ago. Alan Dylan, Attorney for Mr. Delgado said it was May 14. Mr. Scorca said right, and the reason is because they went beyond to make it safe as there were some wall structure problems and they had to seal it up. They put fence around it and cleaned up the property as well, he said. Mr. Scorca said the tenant prior to this owner lived in the basement and did things to the building that actually made it quite dangerous including egress and hallways and walls and that's why Mr. Delgado, in a good way, demoed it to reconfigure that, which he has done.

Chairman Lowell asked for Mr. Atkinson's input. Mr. Atkinson said correct me if I am wrong but I received a copy of the architectural plans and I have a couple comments. He said we need a site plan to be in front of the Planning Board as well as a demolition plan for what was already demoed in the building. Mr. Atkinson said I don't see in the plans where you show existing and proposed. Bill, he said, was the basement always an approved CO'd living area? Mr. Scorca said that's a good question and as far as we were concerned it was listed as a three-family, but whether it was approved or not I don't really know to be honest with you because there are so many things in the Village that have pre-existing conditions. Boardmember Foster said it was a three-family when I looked at it 10 years ago. Chairman Lowell said but you don't know if it was a legal three-family at that time. Boardmember Foster said I have no idea.

Boardmember Foster asked Todd, you said the building is non-conforming for the residential use of the first floor? Mr. Atkinson said the multi-family is not an approved use within the B1 District on the first floor, but it seems to me if this has been operating like this for a minimum of 10 years then they probably have a pre-existing, non-conforming situation. Chairman Lowell said pre-existing non-conforming or grandfathered in by use? Mr. Folchetti said they can have pre-existing non-conforming or a legal non-conforming. He said I think what Todd is saying is that it's a possible pre-existing non-conforming, which is a grandfathering, but if the Building Department doesn't agree then it's up to the Zoning Board to interpret it. Mr. Atkinson said to the attorney for the applicant, when the property purchases was there anything received as part of the title search from the Village or the Town as to what was on record for the actual property. Mr. Dylan said it was a legal three-family.

Chairman Lowell said it sounds to me like there's some work to be done before we can consider this property as the Building Department and our engineer have not revisited it.

Mr. Dylan said I would like to address a couple of the other items that were mentioned. He said with regard to the site plan, it was our understanding that there was no addition

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put on the property so there was no site plan required. We have submitted the architectural plans, he said. Mr. Dylan said we're in agreement with the Building Inspector's characterization and the details represented.

Mr. Atkinson asked Mr. Folchetti: right now I believe Bill is asking for a site plan approval because of the amount of work that was done on the actual residence itself and the Planning Board has a requirement for a site plan to be submitted and/or the Planning Board could potentially waive sections of the requirements; am I right in thinking that? Mr. Folchetti said they can waive any portion of it under the Village Law and Town Code or the entirety of it. Boardmember Foster said to the applicant, are you requesting a waiver of site plan and, if so, exactly why? Mr. Dylan said we are requesting a waiver and we want to mention that the property has been fully secured and you're welcome to come and inspect anytime. Boardmember Foster said why are you requesting a waiver of site plan. Mr. Dylan said my client has been working on this property for a long time and encountered all kinds of problems with the property and exceeding the scope of the plans or permits was due to the condition of the building and not to hide anything or conduct additional work without the approval of the Building Inspector. Chairman Lowell said I appreciate that this work extended due to the conditions and the need to for things to be adequately repaired before you could finish your work, but I'm not sure if we need to have an inspection of the property by the Building Department before we proceed. I know we can waive site plan, he said, but I don't know how comfortable I am with that when we have such extensive work done to the structure. Mr. Dylan said we have no problem with the inspection of the property.

Mr. Scorca said I did speak to Mr. Hernandez and one of the concerns on this building is specifically the rear height of that building; does this mean that it requires a sprinkler system? He said because of the changes we now have to go by what the new Codes are and a sprinkler is definitely specified if you exceed three stories. There were some changes on the bathroom configurations as far as the actual layout, he said. Chairman Lowell said yes, that was part of a set of questions that I had about what kind of alteration to the original plan were made as far as plumbing and electrical code. Mr. Atkinson said the County is tracking the building as a three-family, but it's three 2-bedrooms so are you reconfiguring the layout in each of these in order to get a third bedroom on each floor to make it nine bedrooms because right now it's showing as a 6-bedroom configuration. Mr. Dylan said according to the architect it has always been three bedrooms per unit as shown on page 6 of the drawings, which shows what existed previously. Chairman Lowell said if the County has the building as two bedrooms per floor and the applicant says it was existing as three, was there ever any building permits pulled to change the layout of each of these floors? Mr. Atkinson said I can't say that the County is 100% correct, but that typically what the assessor is tracking as well and we would have to check the actual file for 85 Main Street in the Village and see if there are any additional permits pulled. He said the structure was built in 1890 so we likely won't have original approved plans for it. I don't think it was constructed as a three-family in the beginning in 1890, Mr. Atkinson said, and more than likely it was modified somewhere along the line.

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Mr. Scorca said in the original reconfigured plans that the architect had brought to Joe Hernandez and myself, it showed two full baths for each apartment, which was a no-no. We said that we would go for a bath and a half, he said, which has exceeded the normal number of bathrooms that are in an apartment. Mr. Atkinson said the County is showing four full baths and 1 ½-bath. Mr. Dylan said if you look at page A2 you will see that we made the adjustments to 1-1/2 baths per unit. Chairman Lowell said then you are at 4-1/2 baths.

Boardmember Foster said I think we should take a vote but I think we need a site plan because of the extensive work being done and because of the questions that are being raised so we can formalize the procedure. Chairman Lowell said at this point we would be asking for a site plan. Mr. Folchetti said are you asking for some other detailed submission labeled a site plan so you can look at it and determine whether you're going to go through the full review, is that correct? Chairman Lowell said I think so as I want the stamp of the Building Inspector and Engineer as I think that the County records and Village records should match as closely as possible. Mr. Folchetti said Todd had a letter today with some comments and if the submissions are made and you're satisfied with the detail on them in terms of showing what's there, what's been done, what's been demoed and what's to come, then you can make a determination as to whether you are going to waive the approval process and you're entitled to ask for it and make the determination as to waiving or not once you see what you want to see. Chairman Lowell said yes, I think the questions raised tonight regarding the plumbing, retaining wall, and basement repair are things we are not fully cognizant of and I think it would be wise to have it looked at one more time and then we can determine what we'll do.

Mr. Atkinson said was there an as-built survey completed when the property was purchased. Mr. Dylan said yes there was a survey. Mr. Atkinson said is that something that you can provide to us electronically? Mr. Atkinson also asked about parking as there will need to be a minimum of six parking spots established for this building and you would not be able to utilize or have an agreement with the church that would impact those six parking spots as part of the site plan approval either, he said. Mr. Dylan said we have more than six parking spaces and in fact the church actually has permission to use 10 parking spaces so the rest of the parking lot is Mr. Delgado's. Boardmember Foster said will you be marking out which spots are which with parking lanes or will it be informal? Mr. Dylan said that's an interesting question because we have been going back and forth with the church as they have had some issues, but we haven't designated spots. He said the spots that the church is using are parallel to the daycare center where the wood separates the driveway from the parking lot. Chairman Lowell said Todd, if that's a dirt parking lot, is it close to the DEP lands? Mr. Atkinson said it's within the controlling distance of the reservoir so you will not be able to do any paving. He said that is a concern because depending on the total disturbance that they're looking to do on this site, if we exceed 5,000 sq. ft. it puts us into a category where the DEP would then get involved and that's why you might potentially need to see a site plan. Mr. Dylan said they're not planning to make any changes to the parking area.

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Mr. Atkinson said one recommendation I would have is potentially having a site walk with the Planning Board and Village staff to meet with the applicant to take a look at the site and then maybe make your determination on how to move forward at that point.

Chairman Lowell said a retaining wall was mentioned: does that run along the border of the property with Verizon; does that work entail any runoff that might impact the DEP? Mr. Atkinson said I'm not sure what side the retaining wall is on and I don't see it on the plans. Mr. Scorca said if you're facing the building, it would be the left side. Chairman Lowell said they will need a permit to work on that wall. Mr. Scorca said yes, we stopped that.

Boardmember Foster said on the Short Environmental Assessment Form on page 2, item 9: does the proposed action meet or exceed the state energy code requirements and the word "no" is checked. He said I think it should be yes it does meet the code. Mr. Folchetti said that is a threshold action type of form and what you're going to do in the course of this process here is make a SEQRA Determination one way or another and that's your basic information form that you will actually go through. The long form, if you're going to do a full site plan review, and consider a Negative Declaration and you're going to answer all those questions again, he said. That's basically an information form that the applicant is required to put in with the application but the Board is actually going to answer those questions at some point, he said. Mr. Folchetti said I think the answer should be no because then that means it's a non-action level thing, but this Board is charged with making any SEQRA Determination on the project. Chairman Lowell said it means that's they're not exceeding the allowable amount of energy to be applied. Mr. Atkinson said Marti, you are correct, it should be marked yes. Based on the plans they provided they are not exceeding, but they are meeting the requirements.

Boardmember Foster said on number 14, you checked a habitat type as urban and I think you meant to say suburban. Number 15 about animals, he said, in all the other EAFs I've seen they mention an animal but I don't remember what one it is. Chairman Lowell said it may be a bat habitat.

Boardmember Foster said on the first page of the plans, page A1, if the boiler is close to the apartment is that OK? Mr. Scorca said the boiler room is fine, I don't see any issues with that.

Boardmember Foster said you're removing a chimney so that chimney is not being used; is that a correct statement? Mr. Dylan said that chimney is not used, it's closed and capped. Mr. Atkinson said I think we're getting into some questions that are Building Department questions and not Planning Board questions but I could be wrong.

Boardmember Foster said on page A6 it says 'the project has received a zoning variance'; when was that received and is that zoning variance still valid? Mr. Dylan said I was just informed that we do have a site plan that was dated October 25, 2019 and I

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know that doesn't answer your question. Mr. Dylan said we have not received a zoning variance. Boardmember Foster said then that portion needs to be updated.

Boardmember Foster said it says on the site plan 'the wetlands inspector must be notified by the GC' and I was wondering who the wetlands inspector is. Mr. Dylan said that was apparently only if it was needed but it is my understanding that there are no wetlands. Chairman Lowell said due to the proximity to the DEP land, would a silt fence be required for the work on the retaining wall? Mr. Atkinson said yes, erosion control measures would have to be put into place for any disturbance created at all and this property is within 100 ft. of the DEP watercourse and it's in the 300 ft. controlling distance of the watercourse as well so we would need to see on the site plan the erosion and sediment control measures you are taking to make sure that we're not having an issue with contamination to that watercourse.

Boardmember Foster said Mr. Dylan, did you receive a copy of Todd's comments on your building? Mr. Dylan said no. Boardmember Foster summarized the comments. "Applicant should submit a site plan per the Brewster Planning Board checklist. Applicant should submit an erosion and sediment control plan. Applicant should submit a demolition plan for proposed work." Boardmember Foster said we would need all that before you could come back before the Planning Board in addition or as part of what we discussed so far.

Chairman Lowell said I think we'll organize a walk-through with Building and the engineers and that would be handy to have that together and if we can have that information as soon as possible we'll schedule a walk-through. He said if we all go that has to be a public meeting so we'll post it and walk through the property and we'll be ready to come back next month.

Mr. Atkinson said if you can send a copy of the survey to Michelle as well that would be helpful.

NEW BUSINESS:

None.

Boardmember New made a Motion to adjourn the meeting, seconded by Boardmember Foster, and passed all in favor.